

REMARKS:

Claims 1-10 and 21-32 are hereby cancelled without prejudice.

Claims 11-20 remain in the application for consideration of the Examiner.

The Specification has been amended to update the reference to the related application. No new matter has been added.

Claims 11-20 stand rejected under 35 U.S.C. § 112. Claims 11-20 also stand rejected under 35 U.S.C. § 102(b) over Brinkley et al., U.S. Patent No. 5,897,645.

Reconsideration and withdrawal of the outstanding rejections is respectfully requested in light of the above amendments and following remarks.

REJECTION UNDER 35 U.S.C. § 112:

Claims 11-20 stand rejected under 35 U.S.C. § 112, second paragraph. Specifically, the Office Action alleges that the phrase “coverage function” is not clear as to its meaning.

This allegation is respectfully traversed.

The Examiner’s attention is drawn to the Specification, page 3, lines 20-28, which explains that “coverage” describes an expected ability to partially or completely fill a demand. A “coverage function” can thus be defined that can be optimized to determine an optimized inventory deployment plan. An inventory deployment plan describes a distribution of parts among locations. So, a coverage function can describe the distribution of parts among several locations (See, e.g., page 7, lines 6-9 and lines 30-31). For example, a coverage function can be expressed as a weighted average of coverage for parts at several locations. An example of how such a coverage function can be generated is provided in the flowchart shown in Figure 6, and a specific example of a coverage function is provided as Equation 13 on page 14 of the Specification.

Thus, it is respectfully pointed out that the allegation in the Office Action that “generating a coverage function’ is no more than providing a bill of lading” is respectfully traversed as being completely inconsistent with the teachings of the Specification. A bill of lading is an itemized list of goods, traditionally referring to goods being shipped by sea, which can be used as a receipt or title for the listed goods. Providing a bill of lading does not provide for an expression of parts coverage at multiple locations.

The standard for reviewing a claim for compliance with 35 U.S.C. § 112, second paragraph, is set forth in the MPEP, which states that “[i]n reviewing a claim for compliance with 35 U.S.C. 112, second paragraph, the examiner must consider the claim as a whole to determine whether the claim appraises one of ordinary skill in the art of its scope....” In this case, the term “coverage function” is well-defined in the Specification, a specific example of a coverage function is provided in the Specification, and a method for generating such a coverage function is described in the Specification. Such description is more than adequate for clarifying the scope of the term “coverage function” for those skilled in the art.

It is therefore respectfully submitted that claims 11-20 are fully compliant with the requirements of 35 U.S.C. § 112. Accordingly, it is respectfully requested that the rejection of claims 11-20 under 35 U.S.C. § 112 be reconsidered and withdrawn.

REJECTION UNDER 35 U.S.C. § 102:

Claims 11-20 also stand rejected under 35 U.S.C. § 102(b) over U.S. Patent No. 5,897,645 to Brinkley et al (“Brinkley”).

This rejection is respectfully traversed.

Brinkley does not disclose or suggest many aspects of the presently claimed invention. Brinkley is directed to inventory management, disclosing a system that allows for selection of one of several different inventory management strategies. However, Brinkley focuses on managing inventory levels at specific locations. This is in contrast to the present invention which relates more to optimizing the deployment of parts among several locations.

More specifically, with respect to the present invention as recited in claim 11, Brinkley fails to disclose or suggest, for example, defining plural locations, computing demand for a (each) part at plural (each) locations, estimating availability lead-time/computing lead-time demand/computing stock level for the part at each of the plural locations. It necessarily follows that Brinkley further fails to disclose or suggest determining completely/partially filled demand from the lead-time demands and stock levels and generating a coverage function from the completely and partially filled demands.

Since Brinkley fails to disclose all of the limitations of claim 11, Brinkley cannot anticipate claim 11, or claims 12-20 which depend from claim 11.

In light of the above, it is respectfully submitted that claims 11-20 are in condition for allowance, and notice to that effect is respectfully requested.

THE LEGAL STANDARD FOR ANTICIPATION REJECTIONS UNDER 35 U.S.C. § 102:

The following sets forth the legal standards for "anticipation."

The events that can lead to anticipation can be divided into the following seven categories, all defined by statute:

1. Prior Knowledge: The invention was publicly known in the United States before the patentee invented it.
2. Prior Use: The invention was publicly used in the United States either (i) before the patentee invented it; or (ii) more than one year before he filed his patent application.
3. Prior Publication: The invention was described in a printed publication anywhere in the world either (i) before the patentee invented it; or (ii) more than one year before he filed his patent application.

4. Prior Patent: The invention was patented in another patent anywhere in the world either (i) before the patentee invented it; or (ii) more than one year before he filed his application.

5. On Sale: The invention was on sale in the United States more than one year before the patentee filed his application.

6. Prior Invention: The invention was invented by another person in the United States before the patentee invented it, and that other person did not abandon, suppress or conceal the invention.

7. Prior U.S. Patent: The invention was described in a patent granted on a patent application filed in the United States before the patentee made the invention.

Each of those seven events has its own particular requirements, but they all have the following requirements in common:

1. Anticipation must be shown by clear and convincing evidence.
2. If one prior art reference completely embodies the same process or product as any claim, the product or process of that claim is anticipated by the prior art, and that claim is invalid. To decide whether anticipation exists, one must consider each of the elements recited in the claim and determine whether all of them are found in the particular item alleged to be anticipating prior art.
3. There is no anticipation unless every one of those elements is found in a *single* prior publication, prior public use, prior invention, prior patent, prior knowledge or prior sale. One may not combine two or more items of prior art to make out an anticipation. One should, however, take into consideration, not only what is expressly disclosed or embodied in the particular item of prior art, but also what inherently occurred in its practice.
4. There cannot be an accidental or unrecognized anticipation. A prior duplication of the claimed invention that was accidental, or unrecognized, unappreciated, and incidental to some other purpose is not an invalidating anticipation.

Those four requirements must be kept in mind and applied to each kind of anticipation in issue. The following additional requirements apply to some categories of anticipation.

1. Prior Knowledge: An invention is anticipated if it was known by others in the United States before it was invented by the patentee. "Known," in this context, means known to the public. Private knowledge, secret knowledge or knowledge confined to a small, limited group is not necessarily an invalidating anticipation. Things that were known to the public only outside the United States are not invalidating anticipation.

2. Prior Use: An invention is anticipated if it was used by others before it was invented by the patentee, or more than one year before the patentee filed his patent application. "Use," in this context, means a public use.

3. Prior Publication: A patent is invalid if the invention defined by the claims was described in a printed publication before it was invented by the patentee or more than one year prior to the filing date of his application. For a publication to constitute an anticipation of an invention, it must be capable, when taken in conjunction with the knowledge of people of ordinary skill in the art, of placing the invention in the possession of the reader. The disclosure must be enabling and meaningful. In determining whether the disclosure is complete, enabling, and meaningful, one should take into account what would have been within the knowledge of a person of ordinary skill in the art at the time, and one may consider other publications that shed light on the knowledge such a person would have had.

4. Prior Patent: If the invention defined by the claims was patented in the United States or a foreign country, either before it was invented by the inventor or more than one year before the inventor filed his patent application, then the invention was anticipated. The effective date for this type of anticipation is the date on which two things co-existed: (i) the owner of the referenced patent had the right to enforce that patent; and (ii) the reference patent was available to the public. What was "patented" in the reference patent is determined by what is defined by its claims, interpreted in the light of the general description.

5. On Sale: A patent is invalid if the invention claimed in it was on sale in the United States more than one year prior to the application filing date.

6. Prior Invention: If the invention defined by the claims was invented by another person, in the United States, before it was invented by the inventor, and that other person did not abandon, suppress, or conceal the invention, the invention lacks novelty. A prior invention, even if put in physical form and shown to produce the desired result, is not an invalidating anticipation unless some steps were taken to make it public. However, it is not necessary that the inventor had knowledge of that prior invention.

7. Prior U.S. Application: A patent is invalid for lack of novelty if the invention defined by the claims was described in a United States patent issued on a patent application filed by another person before the invention was made by the inventor. The effective date of a prior application for purposes of this issue is the date on which it was filed in the United States. Foreign-filed patent applications do not apply. If the issued United States patent claims the benefit of more than one United States application, its effective date as an anticipation is the filing date of the first United States application that discloses the invention claimed in that referenced patent.

Experimental Use Exception: The law recognizes that it is beneficial to permit the inventor the time and opportunity to develop his invention. As such there is an "experimental use" exception to the "public use" and "on sale" rules. Even though the invention was publicly used or on sale, more than one year prior to the application filing date, that does not invalidate the patent, provided the principal purpose was experimentation rather than commercial benefit. If the primary purpose was experimental, it does not matter that the public used the invention or that the inventor incidentally derived profit from it.

When a public use or sale is shown, the burden is on the inventor to come forward with evidence to support the experimental use exception. Only experimentation by or under the control of the inventor qualifies for this exception. Experimentation by a third party, for its own purposes, does not qualify for this exception. Once the invention leaves the inventor's control, its use is a public one, even if further experimentation takes place.

The experimentation must relate to the claimed features of the invention. And it must be for the purpose of technological improvement, not commercial exploitation. If any commercial exploitation does occur, it must be merely incidental to the primary purpose of experimentation. A test done primarily for marketing, and only incidentally for technological improvement, is a public use.

CONCLUSION:

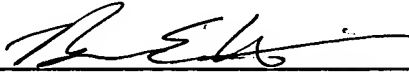
In view of the foregoing amendments and remarks, this application is considered to be in condition for allowance, and early reconsideration and a Notice of Allowance are earnestly solicited.

The undersigned hereby authorizes the Director to charge any fees that may be required, or credit any overpayments, to **Deposit Account No. 500777**. If an extension of time is necessary for allowing the Amendment to be timely filed, this document is to be construed as also constituting a Petition for Extension of Time Under 37 C.F.R. § 1.136(a) to the extent necessary. Any fee required for such Petition for Extension of Time should be charged to **Deposit Account No. 500777**.

Please link this application to Customer No. 53184 so that its status may be checked via the PAIR System.

Respectfully submitted,

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Date


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